

Before the
Federal Communications Commission
Washington, DC 20554 2001-10-16-11-18-01

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Johnson Elementary School) File No. SLD-223824
Johnson, Vermont)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)
Changes to the Board of Directors of the) CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)

ORDER

Adopted: December 3, 2001

Released: December 4, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Johnson Elementary School (Johnson), Johnson, Vermont.¹ Johnson seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to reject Johnson's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we deny Johnson's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on August 7, 2001, denying Johnson's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD denied Johnson's request for discounts for telecommunications services, Funding Request Number (FRN) 515177.⁴ On September 24, 2001, Johnson filed an appeal of SLD's decision to deny FRN 515177.⁵ On October 2, 2001,

¹ Letter from Charles Cavanaugh, Johnson Elementary School, to Federal Communications Commission, filed October 15, 2001 (Request for Review).

² *Id.*

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Charles Cavanaugh, Johnson Elementary School, dated August 7, 2001 (Funding Commitment Decision Letter).

⁴ *Id.*

⁵ Letter from Charles Cavanaugh, Johnson Elementary School, to Schools and Libraries Division, Universal Service Administrative Company, filed September 24, 2001 (Request for Administrator Review).

SLD issued an Administrator's Decision on Appeal indicating that it would not consider Johnson's appeal because it was received more than 30 days after the Funding Commitment Decision Letter was issued.⁶ Johnson subsequently filed the instant Request for Review with the Commission.

3. Under section 54.720(b) of the Commission's rules, an appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.⁷ Documents are considered to be filed with the Commission or SLD only upon receipt.⁸ The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all requests for review filed by a party affected by a decision issued by the Administrator. Because Johnson failed to file an appeal of the August 7, 2001 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Johnson's appeal to SLD as untimely and deny the instant Request for Review.

4. To the extent that Johnson is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request.⁹ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹⁰ Johnson has not shown good cause for the untimely filing of its initial appeal beyond stating that it received the Funding Commitment Decision Letter when there was "minimal staffing, primarily custodians and [its] secretary."¹¹ Johnson contends further that it did not understand the letter contained time-sensitive material until it "read the letter in the opening days of the new school year [after] the 30-day appeal deadline had passed."¹²

5. We are unpersuaded by these arguments. The record shows that the responsible employee to whom the Funding Commitment Decision Letter was addressed returned to work after "approximately Labor Day," two days before the 30-day appeal deadline passed.¹³ Even if the responsible employee had not returned before the 30-day appeal deadline had passed, Johnson suggests that it received the Funding Commitment Decision Letter well before Labor Day.¹⁴ We therefore, find that Johnson had sufficient time and opportunity to appeal SLD's denial.

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Charles Cavanaugh, Johnson Elementary School, dated October 2, 2001 (Administrator's Decision on Appeal).

⁷ 47 C.F.R. § 54.720(b).

⁸ 47 C.F.R. § 1.7.

⁹ See 47 C.F.R. § 54.720(b).

¹⁰ See 47 C.F.R. § 1.3.

¹¹ Request for Review.

¹² *Id.*

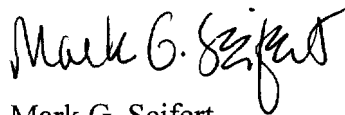
¹³ *Id.*

¹⁴ *Id.*

6. Further, in light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rule and procedures.¹⁵ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf. Here, Johnson fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Request for Review filed by Johnson Elementary School, Johnson, Vermont on October 15, 2001, and the request to waive the 30-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

¹⁵ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630 (Comm. Car. Bur. Rel. November 24, 2000) at para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").